

MEMORANDUM OF LAW

DATE: March 23, 1993

TO: Public Services and Safety Committee

FROM: City Attorney

SUBJECT: Proposed Regulation of Locksmiths

Question Presented

May the City enact legislation regulating locksmiths?

Short Answer

No. The State has preempted local regulation of locksmiths.

Analysis

Article XI, section 7, of the California Constitution allows cities to enact legislation not in conflict with general laws. Local legislation is in conflict with general laws if it duplicates, contradicts, or enters a field fully occupied by the state. *Lancaster v. Municipal Court*, 6 Cal. 3d 805, 807-808 (1972). A field is fully occupied if the State has expressly or impliedly manifested an intent to preempt local legislation. *Candid Enterprises v. Grossmont Union High School District*, 39 Cal. 3d 878, 886 (1985).

In this case, Business and Professions Code sections 6980 through 6980.42 provide for the licensing and regulation of locksmiths through civil and criminal penalties, including fines, suspension and revocation of the licenses. Locksmiths are required to verify the identity of their clients, to complete and maintain work orders, and to have them open to inspection by peace officers and the Bureau of Collection and Investigative Services. Bus. & Prof. Code Section 6980.33; Penal Code Sections 466.6, 466.8. The regulations require detailed information on the work orders. The failure to obtain the appropriate information and maintain the work orders, or to comply with any of the licensing requirements is a misdemeanor. Bus. and Prof. Code Section 6980.34; Penal Code Sections 466.6, 466.8. Peace officers and the Bureau of Collection and Investigative Services may inspect work orders. Bus. & Prof. Code Section 6980.33; Penal Code Sections 466.6, 466.8.

All administrative fines collected, as well as all permit

fees, are paid into the Private Investigation Fund, with appropriation to the Bureau of Collection and Investigative Services for purposes of maintaining the regulations. Bus. and Prof. Code Section 6980.42.

The adoption of rules and regulations related to issuing licenses, the conduct of permittees, and general enforcement is the sole province of the Director of Consumer Affairs. Bus. and Prof. Code Section 6980.7. The Director may delegate any powers and duties to the Bureau of Collection and Investigative Services. Bus. and Prof. Code Section 6980.6.

The comprehensive nature of the regulations, combined with the absence of any grant of authority to local agencies to impose additional regulations, indicates the Legislature's intent to fully occupy the field of locksmith regulation. Therefore, local municipalities are preempted from passing additional regulations.

JOHN W. WITT, City Attorney

By

Mary T. Nuesca

Deputy City Attorney

MTN:jp:520.1(x043.2)

ML-93-37

TOP

TOP